

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PROPOSED
Rules I through III pertaining to)	ADOPTION AND REPEAL
exemptions under 32-9-104, MCA,)	
determining the amount of the surety)	
bond required for new applicants, and)	
the date by which the Montana test)	
must be completed in order to be)	
licensed as a mortgage loan)	
originator in Montana and the repeal)	
of ARM 2.59.1718, 2.59.1719,)	
2.59.1720, and 2.59.1729 pertaining)	
to temporary licenses and transition)	NO PUBLIC HEARING
fees)	CONTEMPLATED

TO: All Concerned Persons

1. On December 13, 2010, the Department of Administration proposes to adopt and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on December 6, 2010, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I AVAILABILITY OF EXEMPTIONS TO ENTITIES AND INDIVIDUALS (1) The exemptions in 32-9-104, MCA, addressing entities are available and apply only to business organizations, including sole proprietorships. An individual is not an entity for purposes of 32-9-104, MCA.

AUTH: 32-9-130, MCA
IMP: 32-9-103, 32-9-104, MCA

STATEMENT OF REASONABLE NECESSITY: Congress authorized the Department of Housing and Urban Development (HUD) to review state laws and rules to determine if the state has a system in place for licensing and registering mortgage loan originators that meets the requirements of the Secure and Fair Enforcement of Mortgage Licensing Act of 2008, 12 USC 5101, et seq. (SAFE Act).

On January 15, 2010, HUD notified the Department of Administration by letter that it had reviewed the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act (Montana SAFE Act). In reference to 32-9-104(1)(a), (f), (g), (h), and (j), MCA, HUD stated, "Only *individuals* are subject to the SAFE Act's licensing requirements. To the extent that MT applies these exemptions only to *companies* and not individuals, the exemptions provided in [MT's] law would not differ from the SAFE Act and HUD's proposed rule. However, these exemptions appear to be inconsistent with the requirements of the SAFE Act to the extent that they could also be read to exempt individuals from the SAFE Act's licensing requirements. The SAFE Act and HUD's Proposed Rule do not provide for such exemptions." (Emphasis in original.)

Subsections 32-9-104(1)(a), (f), (g), (h), and (j), MCA, reference entities. Entity is defined under 32-9-103(11), MCA, to mean a business organization, including a sole proprietorship. The purpose of this new rule is to clarify for all applicants that the department interprets "entity" as used in 32-9-104, MCA, to mean "entity" as defined in 32-9-103(11), MCA, and thus does not include an individual.

NEW RULE II DETERMINING THE AMOUNT OF SURETY BOND FOR A NEW MORTGAGE BROKER OR MORTGAGE LENDER (1) An entity applying for a license as a mortgage broker or mortgage lender for the first time in Montana shall submit with its application the total combined annual loan production volume for the year preceding the year of application as required by 32-9-123(2)(b), MCA.

(2) An entity having no prior business history, or a business history of less than one year at the time of application, shall purchase a surety bond in the amount of \$50,000.

AUTH: 32-9-130, MCA

IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-123, MCA, requires all new applicants for an entity license to carry a surety bond or meet the net worth requirements.

If an entity has been in business in the past and is seeking a new license in Montana, that entity must submit the annual loan production volume of all persons originating residential mortgage loans for them in any business location wherever it is located. The total annual loan production volume is used to set the proper surety bond amount that the entity must carry.

In the case of a start-up entity, or an entity that has been in business less than one full year, the entity must carry a surety bond of \$50,000 for the first year. After one year, the entity's actual annual loan production volume will be used to determine the appropriate surety bond amount.

Once an entity is licensed, it will be required by 32-9-151, MCA, to submit call reports to the Nationwide Mortgage Licensing System (NMLS). These call reports will contain the data necessary for regulators to calculate the entity's annual loan production volume. But, for entities that are initially seeking licensure, that data has not yet been submitted to NMLS. So the department needs a method to get the data to determine the proper amount of the surety bond that should be carried.

For an entity that has not been in business long enough to have annual loan production volume data, the department has chosen to set the bond amount in rule.

The amount of \$50,000 was selected because that was the amount of the bond required for lenders seeking temporary licensure in Montana until they could be transitioned on to the NMLS. The department wanted to be consistent with ARM 2.59.1720, which requires a \$50,000 surety bond for new start-up entities.

NEW RULE III DEADLINE FOR CONDITIONALLY LICENSED MORTGAGE LOAN ORIGINATORS TO COMPLETE THE MONTANA EXAM (1) Individuals holding a conditional license as a mortgage loan originator in Montana shall successfully complete the Montana examination by December 31, 2010.

AUTH: 32-9-130, MCA

IMP: 32-9-114, MCA

STATEMENT OF REASONABLE NECESSITY: The SAFE Act, effective July 30, 2008, gave all states one year to enact legislation complying with the mandates of the SAFE Act. In response to this legislation, the Montana Legislature enacted the Montana SAFE Act, effective July 1, 2009.

The Montana SAFE Act requires all individuals acting as mortgage loan originators to be registered with and licensed through the NMLS. One of the requirements for licensure as a mortgage loan originator is to take and pass, with a score of 75% or better, the Montana state licensing examination. (See, 32-9-110, MCA).

When the SAFE Act was passed, Montana had a state test, but it was not psychometrically valid. In order to develop a psychometrically valid test for each state, the State Regulatory Registry, LLC, (SRR) board hired a nationally known test development company to work with each state to develop a compliant state test. Because all states needed to develop state tests within a one-year period of time, and because it takes six weeks to develop a state test, it was not possible to develop all the states' tests within the one-year period.

The SRR scheduled each state for development of its test based on the needs of each state, the needs of other states, and the number of personnel available for state test development.

Montana began its state test development in March 2010 and concluded in May 2010. However, the Montana SAFE Act required the department to transition all applicants onto the NMLS by April 1, 2010 (for all applicants applying for licensure after July 1, 2009) or June 30, 2010 (for all applicants with current licenses as of July 1, 2009).

The Montana state test could be taken starting June 14, 2010. Because one transition deadline set by statute preceded the date on which the state test became available, and the other transition deadline was two weeks before the test became available to take, the department could not require that applicants for transition take the state test before the transition deadline.

Instead, the department issued conditionally approved licenses, the condition being that the applicant take, and pass, the state test. The date by which applicants must pass the test is set by this rule as December 31, 2010. This date was selected

because all current licensees must renew their licenses by December 31, 2010, in order to be licensed for 2011.

This makes passing the state test a criterion for a normal license renewal and results in a more efficient process for all concerned. Montana mortgage loan originators have already met a number of new requirements this year. The department wanted to minimize the effect of the delayed availability of the state test on licensees.

4. The department proposes to repeal the following rules:

2.59.1718 LICENSE RENEWALS FOR MORTGAGE LENDERS LICENSED AS OF JULY 1, 2009 – TEMPORARY LICENSES, found on ARM page 2-6141.

AUTH: 32-9-114, MCA

IMP: 32-9-102, 32-9-105, 32-9-113, 32-9-120, 32-9-123, MCA

2.59.1719 NEW APPLICANTS FOR A MORTGAGE LOAN ORIGINATOR LICENSE – TEMPORARY LICENSES, found on ARM page 2-6141.

AUTH: 32-9-114, MCA

IMP: 32-9-102, 32-9-105, 32-9-120, 32-9-127, 32-9-128, MCA

2.59.1720 NEW APPLICANTS FOR A MORTGAGE BROKER OR MORTGAGE LENDER LICENSE – TEMPORARY LICENSES, found on ARM page 2-6142.

AUTH: 32-9-114, MCA

IMP: 32-9-102, 32-9-105, 32-9-113, 32-9-120, 32-9-123, 32-9-127, 32-9-128, MCA

2.59.1729 TRANSITION AND INITIAL LICENSE APPLICATION THROUGH NMLS – LICENSE RENEWALS – FEES, found on ARM page 2-6150.3.

AUTH: 32-9-117, 32-9-130, MCA

IMP: 32-9-117, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to repeal ARM 2.59.1718, 2.59.1719, 2.59.1720 and 2.59.1729 because these rules were adopted to account for the transition to using the NMLS. The transition to the NMLS has been completed, therefore, these rules are no longer necessary.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov; and must be received no later than 5:00 p.m., December 10, 2010.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above at the above address no later than 5:00 p.m., December 10, 2010.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 25 persons based on the number of licensed mortgage brokers, mortgage lenders, and mortgage loan originators.

8. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Jeff Essman, the primary bill sponsor of SB 351 (2009), was contacted on May 19, 2009 by U.S. mail.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 1, 2010.